Supreme Court, U.S.
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No. 87-1059

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

MARY DIORIO,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT FOR THE STATE OF CONNECTICUT

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QUESTION PRESENTED

WHETHER THE TRIAL COURT UNDULY RESTRICTED PETITIONER'S RIGHT TO IMPEACH THE CREDIBILITY OF ADVERSE WITNESSES IN VIOLATION OF HER SIXTH AND FOURTEENTH AMENDMENT RIGHT OF CONFRONTATION AND CROSS-EXAMINATION.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . ."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part: ". . .; nor shall any State deprive any person of life, liberty or property, without due process of law; . . ."

Section 53a-8 of the Connecticut General Statutes, entitled "Criminal liability for acts of another," provides as follows: "A person acting with the mental state required for commission of an offense, who solicits, requests,

commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender."

Section 53a-181 of the Connecticut General Statutes, entitled "Breach of peace: Class B misdemeanor," provides as follows:

> (a) A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes

another; or (3) threatens to commit any crime against another person or his property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public, hazardous or physically offenses condition by any act which he is not licensed or privileged to do so.

(b) Breach of peace is a class B misdemeanor.

OPINION BELOW

The opinion of the Connecticut Appellate Court is reported at 12 Conn. App. 74, 529 A.2d 1320 (1987), and is found in petitioner's appendix at 1A-7A.

JURISDICTION

The judgment of the Connecticut Appellate Court was entered on August 18, 1987. The petitioner's motion for reargument or reconsideration was denied by that court on September 16, 1987. The Connecticut Supreme Court, by order dated October 21, 1987, denied a petition for certification to appeal from the Appellate Court decision. The petition for a writ of certiorari was filed on December 21, 1987. The jurisdiction of this Court is invoked under 28 United States Code § 1257(3).

STATEMENT

The following relevant facts, cited by the Connecticut Appellate Court, supported the petitioner's conviction:

> The [petitioner's] daughter was a member of the graduating class of a junior high school. Prior to graduation, the dean of students at the school had disciplined the [petitioner's] daughter. Seeking revenge, the [petitioner] hired and paid one Robert Fuller to dress as a clown at graduation and throw a pie in the face of the dean of students. The dean was hit with a cream pie in front of between one thousand and two thousand people.

State v. Diorio, 12 Conn. App. at 75-76.

At trial, the petitioner attempted to cross-examine Mr. Fuller about (1) a number of allegations of past misconduct made against him by parties not involved in this case; (2) a nolle prosequi of unrelated charges against Fuller; and (3) a previous plea of guilty to an

unrelated misdemeanor in which Fuller participated with another of the state's witnesses, Donald Bello. The trial court gave the petitioner full opportunity to make his offer of proof and then explained its reasons for precluding these areas of inquiry under the applicable Connecticut rules of evidence.

The jury found the petitioner guilty of aiding and abetting a breach of the peace, in violation of Connecticut General Statutes §§ 53a-8 and 53a-181. See Petitioner's Brief at 3.

REASONS FOR DENIAL OF THE PETITION

I. THE PETITION FAILS TO DEMONSTRATE ANY CONFLICT BETWEEN THE CONNECTICUT APPELLATE COURT'S DECISION AND THE CONTROLLING PRECEDENTS OF THIS COURT

The petitioner alleges that this case merits review because the Connec-

ticut Appellate Court "'has decided a federal question in a way in conflict with applicable decisions of this Court. U.S. Sup. Ct. R. 17.1(c).'" Petitioner's Brief at 15. Although the petitioner cites a number of decisions of this Court, she fails to demonstrate any conflict between those cases and the decision rendered under the facts of this case. To the contrary, the Connecticut Appellate Court followed the principles set by this Court in reviewing claims raised under the Sixth Amendment right to confrontation and determined that her claim is without merit. Even a cursory review of the petition reveals that the petitioner is merely seeking a reconsideration of

fact-specific evidentiary questionsl which were fully considered and correctly decided by the Connecticut courts.

The factual questions presented by the petitioner are not matters on which various courts have split, or which have not been resolved by existing precedent. Rather, they call for application of

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[1] It should be noted that in her brief before the Connecticut Appellate Court, the petitioner presented the arguments raised in this petition somewhat differently. Before the Appellate Court, the question of whether the cumulative effect of the trial court's evidentiary rulings amounted to a denial of the right of confrontation was the only claim labelled by the petitioner herself as "The Constitutional Claim" relying upon federal constitutional law. In contrast, the specific evidentiary challenges were claimed as an "abuse of discretion" under Connecticut's laws of evidence and challenged only under applicable state law. In this petition, the petitioner now treats all of these same claims as matters of federal constitutional dimension.

well-established standards to the specific circumstances of this matter. This Court's resources ought not to be spent in resolving questions wholly dependent upon a unique factual context. See Wolfe v. North Carolina, 364 U.S. 177, 196 (1960); United States v. Johnston, 268 U.S. 220, 227 (1925).

II. THE PETITIONER'S CLAIMS ARE INSUBSTANTIAL ON THE MERITS

The Connecticut Appellate Court correctly ruled that the petitioner's constitutional right of confrontation was satisfied by her opportunity for unrestricted cross-examination on matters pertaining to the incident involved in this case, including inquiry into possible witness bias. Her attempt to include areas of inquiry completely unrelated to her criminal trial was

rejected by the state trial court and appellate courts on the basis of state evidentiary laws which do not conflict with the federal constitutional principles relied on by the petitioner.

"[A] claim of undue restriction on cross-examination ordinarily involves a two-pronged analysis: whether the constitutional standard has been met, and, if so, whether the court nonetheless abused its discretion." State v. Heinz, 3 Conn. App. 80, 86, 485 A.2d 1321 (1984). "The constitutional standard is met when defense counsel is 'permitted to expose to the jury the facts from which the jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.'" State v. Gaynor, 182 Conn. 501, 509, 438

A.2d 749 (1980), quoting Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L.Ed.2d 347 (1974).

In its decision, the Connecticut Appellate Court acknowledged the principles established by this Court in Davis v. Alaska, 415 U.S. 308, 318, 94 S. Ct. 1105, 39 L.Ed.2d 347 (1974), and concluded that, in this case, the petitioner was "permitted to expose to the jury the facts from which the jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." Davis v. Alaska, 415 U.S. at 318. State v. Diorio, 12 Conn. App. at 76-77. The petitioner was afforded ample opportunity to cross-examine both Fuller and Bello. The trial court expressly permitted "as much

of a cross-examination as [the petitioner would] like" with respect to the testimony and other circumstances surrounding the incident at issue in this case. The petitioner was permitted to ask about a prior inconsistent statement by Fuller in which he failed to mention to the police that a $10,000 bribe had been offered. The court also ruled that petitioner's trial counsel would be allowed to ask generally if Fuller had been offered anything in return for his testimony and, more specifically, whether Fuller was arrested for his part in the incident or whether any deals were made in this case. The petitioner was also able to inquire about a number of collateral matters, including Fuller's use of an alias in running a summer camp, Fuller's

personal background, and extensive cross-examination concerning the homosexual and business relationships between Fuller and Bello.

The trial court's refusal to permit defense counsel to engage in further cross-examination concerning matters entirely collateral to the issues in this case did not violate the defendant's confrontation rights. See United States v. Andrew, 666 F.2d 915, 925 (5th Cir. 1982); United States v. Vasilios, 598 F.2d 387, 390-91 (5th Cir.), cert. denied, 444 U.S. 967, 100 S. Ct. 456, 62 L.Ed.2d 380 (1979), reh. denied, 444 U.S. 1049, 100 S. Ct. 742, 62 L.Ed.2d 737 (1980).

With respect the particular evidentiary rulings, the Connecticut Appellate Court correctly applied the

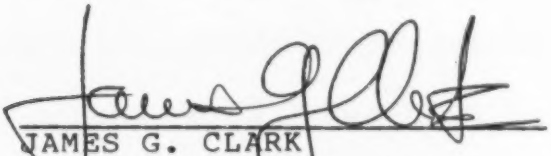
state rules of evidence. The federal cases cited by the petitioner, which were not presented before the Connecticut courts, do not demonstrate any conflict between the decisions of this Court and the determinations of our state courts under the appropriate rules of evidence.

CONCLUSION

For these reasons, the State of Connecticut urges this Court to deny the petition.

Respectfully submitted,

STATE OF CONNECTICUT

By: 

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